1. S.B.CIVIL MISC. APPEAL NO.199/2007
(Yash Choudhary & Ors. Vs. Mohan Lal & Ors.)

2. S.B.CIVIL MISC. APPEAL NO.1746/2006
(Yash Choudhary & Ors. Vs. Mohan Lal & Ors.)

DATED : 13th February 2007

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr. Parikshit Nayak for the appellants

BY THE COURT:

These two appeals CMA Nos.199/2007 and 1746/2006 preferred by the claimants against the common award dated 04.06.2005 made by the Motor Accidents Claims Tribunal, Banswara in Claim Case Nos. 253/2004 and 271/2004 have been heard together; and shall be governed by this common order.

Background facts leading to these appeals are that on 31.07.2004 at about 12:30 p.m. in Kundala valley on Badrel to Banswara road, Mahesh Choudhary (about 41-42 years) and his wife Urmila Choudhary (about 36-37 years) while riding a motorcycle were hit by on-coming bus bearing number MP13 C 3166; and succumbed to the injuries on the spot. Two sons of the victim couple, Yash (6 years) and Harsh (4 years) through their uncle Suresh Choudhary, and parents of the

victim Mahesh Choudhary filed two claim applications aforesaid seeking compensation against the driver, owner and insurer of the offending bus. Upon the replies of the non-applicants, the Tribunal framed consolidated issues for determination of the questions involved in these cases and after taking evidence and hearing the parties held that the accident that annihilated the couple occurred for rash and negligent driving of the bus.

The Tribunal quantified compensation for the claimants in these two cases thus: In relation to the victim Mahesh Choudhary, with reference to the post mortem report the Tribunal took his age at 42 years; and with reference to the statements of AW-1 Suresh Choudhary found that the parents of the victim were residing in the State of Uttar Pradesh and were not his dependants; and observed that wife of the victim also perished in the same accident. Then, with reference to the statements of AW-4 Ranchhor Garg, Block Education Officer, Panchayat Samiti, Banswara and salary certificate Ex. 13 the Tribunal found that the victim was working as Teacher Grade III at Government Primary School, Badi Badrel and was getting salary of Rs. 8,847/- per month; but on the basic salary and DA, took his net income at Rs. 7,353/- per month. Thereafter, the Tribunal provided for future increment prospects and with addition of Rs. 2,200/- took his average monthly income at Rs. 9,553/-; and deducting one-third

wherefrom took loss of dependency at Rs. 6,369/-, rounded up to Rs. 6,370/- per month, i.e. Rs. 76,440/- per annum; and with application of multiplier of 15 assessed pecuniary loss at Rs. 11,46,600/-; and allowing Rs.15,000/- towards non-pecuniary loss awarded compensation in the sum of Rs. 11,61,600/-.

In relation to the victim Urmila Choudhary, with reference to the statements of AW-1 Suresh Choudhary the Tribunal took her age at 36 years and found that her parents-in-law residing in the State of Uttar Pradesh were not her dependants; and observed that husband of the victim perished in the same accident. Then, with reference to the statements of AW-1 Mangilal Chaprota, Principal of Government Secondary School, Chhoti Badrel and salary certificate Ex. 1 found that the victim was working as Senior Teacher at the said Government Secondary School and was getting salary of Rs. 10,742/- per month; but on the basic salary and DA, took her net carry-home income at Rs. 9,164/- per month. Thereafter, the Tribunal provided for future increment prospects and with addition of Rs. 4,400/- took her average monthly income at Rs. 13,564/-; and deducting one-third wherefrom took loss of dependency at Rs. 9,043/-, rounded up to Rs. 9,050/- per month, i.e. Rs. 1,08,600/- per annum; and with application of multiplier of 16 (though for typographical error the multiplier has wrongly been stated as 15 in the

calculation made by the Tribunal) assessed pecuniary loss at Rs. 17,37,600/- and allowing Rs.15,000/- towards non-pecuniary loss awarded compensation in the sum of Rs. 17,52,600/-. In both the cases the tribunal has also allowed interest @ 6% per annum after adjustment of the amount of Rs.50,000/-, if received under interim award. The claimants seek enhancement over the amount so awarded by the Tribunal in these two appeals.

Having heard learned counsel for the appellants and having examined the award in its totality, this court is clearly of opinion that the impugned award in relation to both the claim applications could only be said to have been made rather liberally taking uncommon compassionate view of the matter in the peculiar facts of the case, where the minor claimants Nos. 1 & 2 have suddenly been orphaned due to the accident. After leaving aside only the necessary deductions from out of the salary income of both the victims, the Tribunal has enhanced the net carry-home income of the father of the children by about 30% towards future prospects; and has made this enhancement by about 48% in relation to their mother. Despite the average income so calculated standing on much higher side, respectively at Rs. 9,553/- per month (1,14,636/- per year) and at Rs. 13,564/- per month (Rs. 1,62,768/- per year), the Tribunal has applied maximum side

multiplier in the two cases at 15 and 16 respectively after deducting one-third. The award in question by all standards remains on the higher side and the claim for enhancement thereupon could only be rejected as pointless.

The appeals fail and are, therefore, dismissed summarily.

(DINESH MAHESHWARI), J.

Mohan/